

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KENNETH L. HOLLAND,)
)
Plaintiff,)
)
v.) Civil Action No. 05-464-SLR
)
)
STAN TAYLOR, et al.,)
)
Defendants.)

ORDER

WHEREAS, plaintiff, Kenneth L. Holland, a former prisoner incarcerated at the Delaware Correctional Center, Smyrna, Delaware, filed a complaint under 42 U.S.C. § 1983, along with an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915;

WHEREAS, on October 31, 2005, this court issued a service order requiring the United States Marshal ("USM") to serve the complaint upon receipt of USM 285 forms for each defendant (D.I. 12);

WHEREAS, plaintiff moves to amend the complaint by clarifying parties' names and adding two defendants, Stephen Devine and Helen Moore (D.I. 13);

WHEREAS, pursuant to Fed.R.Civ.P. 15(a), a party may move to amend the party's pleading once as a matter of course before a responsive pleading is served;

WHEREAS, to date service has not been effected;

THEREFORE, at Wilmington this 5th day of January, 2006, IT IS ORDERED that:

1. Plaintiff's "Motion for Leave to File an Amended Complaint" (D.I. 13) is **GRANTED**.
2. The Clerk of the Court shall cause a copy of this order to be mailed to plaintiff.
3. Pursuant to Fed. R. Civ. P. 4(c)(2) and (d)(2), Plaintiff shall complete and return to the Clerk of the Court an **original** "U.S. Marshal-285" form for the Attorney General of the State of Delaware, 820 N. FRENCH STREET, WILMINGTON, DELAWARE, 19801, pursuant to DEL. CODE ANN. tit. 10 § 3103(c). **Additionally, plaintiff shall provide the Court with one copy of the complaint and the motion to amend the complaint for service upon the additional defendants: Stephen Devine and Helen Moore. Plaintiff is notified that the United States Marshal will not serve the complaint and the Motion to Amend the Complaint until all "U.S. Marshal 285" forms have been received by the Clerk of the Court. Failure to provide the "U.S. Marshal 285" forms for the additional defendants and the attorney general within 120 days from the date of this order may result in the complaint being dismissed or defendants being dismissed pursuant to Federal Rule of Civil Procedure 4(m).**
4. Upon receipt of the form(s) required by paragraph 2

above, the United States Marshal shall forthwith serve a copy of the complaint and the motion to amend the complaint, this order, a "Notice of Lawsuit" form, the filing fee order(s), and a "Return of Waiver" form upon the additional defendants identified in the 285 forms.

5. Within **thirty (30) days** from the date that the "Notice of Lawsuit" and "Return of Waiver" forms are sent, if an executed "Waiver of Service of Summons" form has not been received from a defendant, the United States Marshal shall personally serve said defendant(s) pursuant to Fed. R. Civ. P. 4(c)(2) and said defendant(s) shall be required to bear the cost related to such service, unless good cause is shown for failure to sign and return the waiver.

6. Pursuant to Fed. R. Civ. P. 4(d)(3), a defendant who, before being served with process timely returns a waiver as requested, is required to answer or otherwise respond to the complaint within **sixty (60) days** from the date upon which the complaint, this order, the "Notice of Lawsuit" form, and the "Return of Waiver" form are sent. If a defendant responds by way of a motion, said motion shall be accompanied by a brief or a memorandum of points and authorities and any supporting affidavits.

7. No communication, including pleadings, briefs, statement of position, etc., will be considered by the Court in this civil

action unless the documents reflect proof of service upon the parties or their counsel.

8. **NOTE: ***** When an amended complaint is filed prior to service, the Court will **VACATE** all previous Service Orders entered, and service **will not take place**. An amended complaint filed prior to service shall be subject to re-screening pursuant to 28 U.S.C. §1915(e)(2) and § 1915A(a). ***

9. **Note:** *** Discovery motions and motions for appointment of counsel filed prior to service will be dismissed without prejudice, with leave to refile following service. ***



United States District Judge